



FEDERAL TRADE COMMISSION

[File No. P222100]

HISA Enforcement Rule Modification

AGENCY: Federal Trade Commission.

ACTION: Notice of Horseracing Integrity and Safety Authority (HISA) proposed rule modification; request for public comment.

SUMMARY: The Horseracing Integrity and Safety Act of 2020 recognizes a self-regulatory nonprofit organization, the Horseracing Integrity and Safety Authority, which is charged with developing proposed rules on a variety of subjects. Those proposed rules and proposed rule modifications take effect only if approved by the Federal Trade Commission. The proposed rules and rule modifications must be published in the *Federal Register* for public comment. Thereafter, the Commission has 60 days from the date of publication to approve or disapprove the proposed rule or rule modification. The Authority submitted to the Commission a proposed rule modification on Enforcement on June 5, 2022. The Office of the Secretary of the Commission determined that the proposal complied with the Commission's rule governing such submissions. This document publicizes the Authority's proposed rule modification's text and explanation, and it seeks public comment on whether the Commission should approve or disapprove the proposed rule modification.

DATES: If approved, the HISA proposed rule modification would take effect upon approval, and the Commission must approve or disapprove the proposed rule modification [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Comments must be received on or before [INSERT DATE 14 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Interested parties may file a comment online or on paper by following the

instructions in the Comment Submissions part of the SUPPLEMENTARY INFORMATION section below. Write “HISA Enforcement Rule Modification” on your comment and file your comment online at <https://www.regulations.gov> under docket number FTC-2022-0044. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex B), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Austin King (202-326-3166), Associate General Counsel for Rulemaking, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Self-Regulatory Organization’s Statement of the Background, Purpose of, and Statutory Basis for, the Proposed Rule Modification
 - a. Background and Purpose
 - b. Statutory Basis
- II. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Modification and Discussion of Alternatives
- III. Self-Regulatory Organization’s Summary of Comments Received Pre-Submission and Its Responses to Those Comments
- IV. Legal Authority
- V. Effective Date
- VI. Request for Comments
- VII. Comment and Submissions
- VIII. Communications by Outside Parties to the Commissioners or Their Advisors
- IX. Self-Regulatory Organization’s Proposed Rule Language

Background:

The Horseracing Integrity and Safety Act of 2020¹ recognizes a self-regulatory nonprofit organization, the Horseracing Integrity and Safety Authority, which is charged with developing proposed rules on a variety of subjects. Those proposed rules and proposed rule modifications take effect only if approved by the Federal Trade Commission.² The proposed rules and rule modifications must be published in the *Federal Register* for public comment.³ Thereafter, the Commission has 60 days from the date of publication to approve or disapprove the proposed rule or rule modification.⁴

Pursuant to Section 3053(a) of the Horseracing Integrity and Safety Act of 2020 and Commission Rule 1.142, notice is hereby given that, on June 5, 2022, the Horseracing Integrity and Safety Authority (“HISA” or the “Authority”) filed with the Federal Trade Commission an Enforcement proposed rule modification and supporting documentation as described in Items I, II, III, and IX below, which Items have been prepared by the Authority. The Office of the Secretary of the Commission determined that the filing complied with the Commission’s rule governing such submissions.⁵ The Commission publishes this notice to solicit comments on the proposed rule modification from interested persons.

I. Self-Regulatory Organization’s Statement of the Background, Purpose of, and Statutory Basis for, the Proposed Rule Modification

a. Background and Purpose

The Horseracing Integrity and Safety Act of 2020 (“Act”) recognizes that the establishment of a national set of uniform standards for racetrack safety and medication control will enhance the safety and integrity of horseracing. The racetrack safety

¹ 15 U.S.C. 3051 through 3060.

² 15 U.S.C. 3053(b)(2).

³ 15 U.S.C. 3053(b)(1).

⁴ 15 U.S.C. 3053(c)(1).

⁵ 16 CFR 1.140 through 1.144; *see also* Fed. Trade Comm’n, Procedures for Submission of Rules Under the Horseracing Integrity and Safety Act, 86 FR 54819 (Oct. 5, 2021), <https://www.federalregister.gov/documents/2021/10/05/2021-21306/procedures-for-submission-of-rules-under-the-horseracing-integrity-and-safety-act>.

standards are established in the Rule 2000 Series, the “Racetrack Safety Program,” filed by the Authority with the Commission on December 6, 2021. The Rule 2000 Series was published in the Federal Register on January 5, 2022⁶ and subsequently approved by the Commission by Order dated March 3, 2022.⁷ On December 20, 2021, the Authority filed with the Commission the Rule 8000 Series, which establish penalties and adjudicatory procedures for the enforcement of rules promulgated by the Authority. The Rule 8000 Series was published in the Federal Register January 26, 2022⁸ and approved by the Commission by Order dated March 25, 2022.⁹

In its Order, the Commission directed the Authority to file modifications to three provisions in the Rule Series 8000, stating as follows: “The Commission directs the Authority (1) to not impose the proposed sanction in Rule 8200(b)(6) on a covered person until such time as the Authority has proposed, and the Commission has approved, a rule modification that is more narrowly tailored; (2) to file with the Commission, by July 1, 2022, a supplemental proposed rule modification explicitly stating guidelines for confidentiality and public reporting at the different stages of the processes outlined in the Enforcement rule; and (3) to file with the Commission, by July 1, 2022, a supplemental proposed rule modification in which the Authority further defines the meaning of ‘object’ and ‘device’ within proposed Rule 8400(a)(2)’s list of items eligible for seizure and provides a process for the return of seized property if no violation is found.”¹⁰

The Authority therefore proposes the rule changes described in this Notice in order to fulfill the Commission’s directives. In addition, the Authority on its own

⁶ See Fed. Trade Comm’n, Notice of HISA Racetrack Safety Proposed Rule (“Notice”), 87 FR 435 (Jan. 5, 2022), <https://www.federalregister.gov/documents/2022/01/05/2021-28513/hisa-racetrack-safety>.

⁷ See Fed. Trade Comm’n, Order Approving the Racetrack Safety Rule Proposed by the Horseracing Integrity & Safety Auth. at 1, ___ F.T.C. ___ (Mar. 3, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/order_re_racetrack_safety_2022-3-3_for_publication.pdf.

⁸ See Fed. Trade Comm’n, *HISA Enforcement Rule*, 87 FR 4,023, 4,028 (Jan. 26, 2022), <https://www.federalregister.gov/documents/2022/01/26/2022-01663/hisa-enforcement-rule>.

⁹ See Fed. Trade Comm’n, Order Approving the Enforcement Rule Proposed by the Horseracing Integrity & Safety Auth., at 1, ___ F.T.C. ___ (Mar. 25, 2022) (“Enforcement Rule Order”), <https://perma.cc/H9SJ-F9WA>.

¹⁰ *Id.* at 35–36.

initiative proposes to amend the Rule 8000 Series and to supplement it with additional provisions. Some of these amendments and supplements have been prompted by comments and suggestions received from interested members of the horseracing industry since the rules were filed on December 20, 2021.

The violations, adjudications, and search procedures in the Rule 8000 Series are tailored to the unique aspects of horseracing in that violations of the rules of horseracing do arise in the sport and must be penalized. Violations must be effectively penalized to deter future violations and to ensure that horseracing is conducted in a fair and transparent manner that ensures public confidence in the integrity of the sport. Various specific violations are established in Rule 8100, and the schedule of sanctions set forth in Rule 8200 provides the specific penalties that are the consequence of committing a rule violation. The schedule is tailored to the unique aspects of horseracing in that it imposes revocations, suspensions, substantial fines, exclusions from racetrack grounds, and other penalties that are commonly imposed upon licensed participants in horseracing.

Before a penalty is imposed, persons alleged to have committed violations are entitled to a fair hearing at which they are afforded an opportunity to present evidence in defense of a charged violation. While a full process hearing is available on appeal of cases to the Commission pursuant to 15 U.S.C. 3058(b), hearing processes are also necessary before various bodies of the Authority to make sure that any penalties imposed upon Covered Persons are adjudicated carefully and fairly. This ensures that violations are consistently and fairly penalized. The provisions set forth in Rule 8300 establish the rules and parameters of the various hearing processes. These provisions also provide for appeals to the Board of the Authority to review any decisions rendered against a Covered Person who is charged with a violation. The various hearing procedures are keyed to the unique organizational structure of the Authority. Rules 8200(d) and 8360 also establish procedures for notices of violations and hearings to adjudicate the denial, suspension, or

revocation of racetrack accreditation in those instances in which racetracks are alleged to have committed violations of the Racetrack Safety rules. Racetrack safety is of course unique to horseracing and is essential to ensure that horseracing is conducted safely and in a fair and transparent manner.

The successful prosecution of violations requires the investigation of all the circumstances surrounding an alleged violation. Central to any investigation is the power to gain access to the books, records, and certain premises of persons believed to have committed a violation; to subpoena witnesses; and to take testimony under oath of any person with knowledge of the circumstances regarding a violation. Rule 8400 specifically confers these powers upon the Authority and penalizes any obstruction or failure to comply with the investigatory powers set forth in the section.

The proposed rule modification is described in detail in Item II of this Notice. Various rules pertaining to horseracing and equestrian sports that were consulted in the development of this proposed rule modification are available as Exhibit A at the docket at <https://www.regulations.gov>. In conformity with 15 U.S.C. 3057(d)(2) of the Act, the various modifications described take into account the unique aspects of horseracing, are designed to ensure fair and transparent horseraces, and will serve to deter safety and performance violations. Anti-doping and medication control rule violations will be established in detail in proposed rules to be filed later this year.

On May 13, 2022, HISA representatives shared a draft of the proposed rule modification with a number of interested stakeholders for input. Those interested stakeholders included: Racing Officials Accreditation Program; Racing Medication and Testing Consortium (Scientific Advisory Committee); Water Hay Oats Alliance; National Thoroughbred Racing Association; The Jockey Club; The Jockeys' Guild; Thoroughbred Racing Association; Arapahoe Park; Grants Pass Downs; Arizona Downs; Colonial Downs; Thoroughbred Owners of California; California Horse Racing Board; National

Horsemen's Benevolent and Protective Association; Thoroughbred Horsemen's Association Mid-Atlantic Safety Coalition; Thoroughbred Owners and Breeders Association; Kentucky Thoroughbred Association; American Association of Equine Practitioners; American Veterinary Medical Association; Delaware Racing Commission; New York Racing Association, Stronach Racing Group (5 thoroughbred racetracks); Churchill Downs (6 thoroughbred racetracks); Keeneland; and Del Mar. On May 13, 2022, the rule modification proposal was made available to the public for review and comment on the HISA website at <https://www.hisausregs.org>. Several comments were received from various stakeholders, which are outlined in Item III of this Notice. Available at the docket on <https://www.regulations.gov> as Exhibit B are copies of all pre-submission comments received concerning the proposed rule modification.

With the review, input, and ultimate approval of the Authority's Board of Directors, the proposed rule modification to the Rule 8000 Series modifies and enhances the penalties and adjudication procedures for the enforcement of rules promulgated by the Authority.

b. Statutory Basis

The Horseracing Integrity and Safety Act of 2020, 15 U.S.C. 3051 through 3060.

II. Self-Regulatory Organization's Statement of the Terms of Substance of the Enforcement Proposed Rule Modification and Discussion of Alternatives

Rule 8200(b)(6), as originally filed with the Commission on December 20, 2021, established a penalty that operated to "bar a Covered Person from associating with all Covered Persons concerning any matter under the jurisdiction of the Commission and the Authority during the period of a suspension." The Commission directed the Authority to "not impose this sanction on a covered person until such time as the Authority has proposed, and the Commission has approved, a rule modification that is more narrowly

tailored.”¹¹ In response to this directive, the Authority considered alternative sanctions currently in place in various state racing jurisdictions. The Authority now proposes to replace the penalty language quoted above with a different sanction in Rule 8200(b)(6), which will authorize the Authority to “deny a Covered Person or a Covered Horse access to any location under the jurisdiction of the Authority during the period of a suspension.” With this revision, Rule 8200(b)(6) will no longer place broad restraints upon a Covered Person’s association with other Covered Persons but instead will prohibit a Covered Person from entering upon grounds under the jurisdiction of the Authority. The provision will accomplish the same basic end, which is to restrict Covered Persons from direct involvement with racing activities on grounds under the jurisdiction of the Authority during the period of a suspension. The restriction makes the suspension meaningful and deters future violations, thus furthering the goal of ensuring fair and transparent horseraces in a manner consistent with 15 U.S.C. 3057(d). By operating to exclude a Covered Person from horseracing grounds, the provision is tailored to the unique aspects of horseracing and is similar to provisions in the regulations of Kentucky and Minnesota, as well as the Model Rules of the Association of Racing Commissioners International (“ARCI”).

In its Order, the Commission also directed the Authority “to file with the Commission by July 1, 2022 a supplemental proposed rule modification explicitly stating guidelines for confidentiality and public reporting at the different stages of the processes outlined in the Enforcement rule.”¹² The Authority proposes to amend the Rule Series 8000 to include a new Rule 8380, entitled “Guidelines for Confidentiality and Public Reporting.” The rule draws upon a similar provision in the rules of the International Equestrian Federation (“FEI”) that governs public disclosure and confidentiality in the

¹¹ *Id.* at 15.

¹² *Id.* at 29.

realm of equestrian sports.¹³ Provisions of this kind in horseracing regulations are typically spare and lacking in detail, but the FEI Rules provide a sound framework for the development of the Authority's proposed rule.

The rule serves the interest of providing greater transparency to the public concerning the adjudication of rule violations. In many cases involving the violation of medication rules in particular, little is known by the public of the details of an alleged violation beyond rumor and speculation. This is because, in many racing jurisdictions, regulators—particularly at the initial level of adjudication before the state stewards—are prohibited from disclosing information concerning the alleged violation. The proposed Rule 8380 will loosen these restrictions and require the Authority to disclose basic facts about the alleged violation, including “(1) the identity of the Covered Person who is the subject of the alleged violation, (2) the identity of any applicable Covered Horse, and (3) the rule violated and, where appropriate, the basis of the asserted violation.” The rule also permits the Authority to comment on any information disclosed by the Covered Person charged with the alleged violation. In some instances, persons charged have made public statements concerning contested facts, and regulators should have the ability to respond to inaccurate comments if they cast unfounded doubt upon the legitimacy of the disciplinary process or of horseracing in general.

In addition, Rule 8380 also contains provisions that permit the Authority to refrain from any public disclosure in situations that would compromise an ongoing investigation or in circumstances in which the Covered Person charged with a violation is a minor. Conversely, the Authority is permitted in the interest of public safety to make any disclosure that concerns a violation or circumstance that poses a serious and imminent risk of harm to Covered Persons, Covered Horses, or the public. Rule 8380 further provides for the disclosure of detailed information within 20 days of the

¹³ See FEI Equine Anti-Doping and Controlled Medication Regulations, Article 13.

imposition of a sanction, the resolution of a matter between the parties, or the dismissal of the action.

By providing the public with information concerning alleged violations, the public disclosure rule works toward the goal of ensuring fair and transparent horseraces in a manner consistent with 15 U.S.C. 3057(d). It takes into account the unique aspects of the adjudication of alleged violations of the rules of horseracing, and by strengthening the system of adjudication it helps to deter future violations while at the same time enhancing public confidence in the sport.

In its Order, the Commission directed the Authority “to submit to the Commission a supplemental proposed rule modification by July 1, 2022, in which the Authority further defines the meaning of ‘object’ and ‘device’ within proposed Rule 8400(a)(2)’s list of items eligible for seizure (‘medication, drug, substance, paraphernalia, object, or device’) and that provides a process for the return of seized property if no violation is found.”¹⁴

It is difficult to define “object” or “device” with precision, and other racing rules consulted by the Authority do not provide definitions for these or similar terms in a seizure context. Nevertheless, the proposed modification amends the language of the Rule as originally filed to specify that the Authority may seize “any object or device reasonably believed to have been used in furtherance of the violation or suspected violation.” Objects that might be used in furtherance of prohibited activity include intravenous tubing, oral dosing syringes, needles, nasal gastric tubes, various types of container bags and vials, and many other items. The language is broad enough to include devices such as computers and phones if there is reason to believe that these devices have been used in furtherance of a violation. In doping and medication-violation cases in particular, it is often found that information concerning medications and drugs

¹⁴ Enforcement Rule Order at 34–35.

administered to horses are stored on computers and phones. Rather than try to construct definitions of “object” or “device” that will likely be vague and fail to include certain items while including others in an overly expansive manner, the Authority has proposed language that closely ties the terms “object” and “device” to the violation being investigated; seizure is justified only if the object or device is reasonably believed to have been used in furtherance of the violation or suspected violation.

Additionally, and pursuant to the directive of the Commission, the proposed rule modification includes a new provision in Rule 8400(a)(3) that requires the Authority to return seized property upon the final resolution of a violation, so long as the possession of the property is not specifically prohibited by the Act or the rules of the Authority. Many racing jurisdictions return property as a matter of course, though not specifically required to do so; the Authority’s rule requires property to be returned unless specifically prohibited.

The changes to the language referencing the words “object” and “device,” as directed by the Commission, take into account the unique aspects of horseracing violation investigations, especially the necessities of seizure in medication-violation cases. By providing effective measures to seize evidence, the modification enhances the investigation and successful adjudication of violations, thus deterring future violations in a manner consistent with 15 U.S.C. 3057(d). An effective enforcement system builds public confidence in the sport by ensuring that horseracing is conducted in a fair and transparent manner. The return policy is adopted as a matter of fairness to Covered Persons whose property has been seized; property that is not specifically prohibited under the Authority’s rules shall be returned upon the final resolution of a violation.

In addition to the amendments directed by the Commission, the Authority has also proposed several modifications on its own initiative. And, in some instances, rule changes have been prompted in response to comments previously received during the

formal comment period after the filing of the Rule 8000 Series with the Commission on December 20, 2021.

Rule 8400(a)(2) gives the Authority the power to “seize any medication, drug, substance, paraphernalia, object, or device in violation or suspected violation of any provision of 15 U.S.C. Chapter 57A or the regulations of the Authority.” As noted in the Commission’s Order, some commenters to the Rule 8000 Series expressed concerns that the seizure provisions were overbroad, though the referenced language in the Rule 8000 Series as originally filed was approved by the Commission.¹⁵ The language of the rule tracked the statutory language at 15 U.S.C. 3054(c)(1), which states in pertinent part that the Authority “shall develop uniform procedures and rules authorizing—(i) access to offices, racetrack facilities, other places of business, books, records, and personal property of covered persons that are used in the care, treatment, training, and racing of covered horses.” It should also be noted that statutes in other state racing jurisdictions are similarly broad (such as Kentucky). The Commission addressed this matter in detail in the Order approving the Enforcement rules, noting that the commenters’ objections are really with the Act itself.¹⁶ Nevertheless, to allay the concerns expressed, the Authority has filed a proposed rule modification that restricts the scope of Rule 8400(1)(a). Specifically, the new language authorizes the Commission, the Authority, or their designees to have free access to books, records, offices, racetrack facilities, and other places of business of both Covered Persons and any person who owns a Covered Horse or performs services on a Covered Horse, but the language requires that the items and locations subject to access must relate to the care, treatment, training, and racing of Covered Horses. This provision is included to clarify that items and locations unrelated to horseracing may not be accessed by the Authority.

¹⁵ See *id.* at 30–35.

¹⁶ See *id.* at 34.

Rule 8100(g) is modified to include as a violation the “failure of a Responsible Person to register a Covered Horse.” After the Rule 8000 Series was filed on December 20, 2021, the Authority developed and filed, on April 25, 2022, the Rule 9000 Series, “Registration of Covered Persons and Covered Horses.” The Commission approved the Registration rule by Order dated June 29, 2022.¹⁷ Rule 9000(i) requires Responsible Persons to ensure that Covered Horses are registered with the Authority. A penalty is therefore added to Rule 8100(g) to authorize the imposition of sanctions for failure to do so.

In Rule 8200(b), “Imposition of Sanctions,” the Authority proposes to modify this provision to specify that any penalties imposed under that Rule shall be “in proportion to the nature, chronicity, and severity of the violation.” This language provides a rubric or standard to guide discretion in the imposition of penalties. In the same paragraph, a scrivener’s error is corrected to refer to the Rule 8000 Series to make clear that sanctions are imposed after hearings conducted under the rules of both the Rule 7000 and 8000 Series. Additionally, the Authority proposes to modify Rule 8200(b)(2)(ii) concerning the fines that may be imposed for second violations of Authority rules. Under the Rule as originally filed, the fine was established at \$50,000.00 to \$100,000.00; the Rule will be modified to state that a fine may be imposed in an amount “up to \$100,000.00.” This modification will give the Authority greater flexibility in assessing a fine in proportion to the nature, chronicity, and severity of the violation.

Rule 8200(d) is amended to recognize that “one or more stewards” may issue a Notice of Suspected or Actual Violation, in addition to the Authority and the Racetrack Safety Committee. In addition, the Authority proposes to amend Rule 8200(d)(iii) to permit the Authority to consider “any other relevant factor” in establishing the time

¹⁷ See Fed. Trade Comm’n, Order Approving Registration Rule Proposed by Horseracing Integrity & Safety Auth., at 1 (June 29, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/P222100CommissionOrderRegistrationRuleFinal.pdf.

period allowed for a Covered Person to respond to a Notice of Suspected or Actual Violation. This catch-all provision is added to allow consideration of all relevant factors pertaining to the response time, in addition to the seriousness of the violation and the imminence of risk to Covered Persons, Covered Horses, Covered Horseraces or the public.

The Authority is proposing modifications to several provisions in Rule 8300 to elaborate upon the procedures to be followed by track-level stewards in adjudicating penalties. The provisions to be amended are Rule 8320(a), Rule 8320(b)(3), and Rule 8330(c), and the language of the amendment is similar in each rule. The amendment states more explicitly than the original language in the rules that the stewards shall adjudicate all alleged violations of Rules 2271(b) or 2272 relating to the use of Shock Wave Therapy, violations of Rule 2280 relating to the use of the riding crop, and violations of Rule 2273 relating to the use of other electrical or mechanical devices. The amendment also makes clear that the stewards shall utilize the hearing procedures of the state jurisdiction in which a violation is alleged to have occurred.

The amendment further addresses the broader issue of whether a state racing commission has entered into an agreement under which the state stewards serve in an adjudicatory capacity under the Rule 8000 Series and enforce the Rule 2200 Series. In those states in which the state racing commission has not entered into an agreement with the Authority, the amendment provides that stewards appointed by the Authority to enforce the Rule 2200 Series shall adjudicate these cases. Since the burden of enforcing these rules will not be heavy in many jurisdictions, only one steward may be necessary to adjudicate violations under the Rule 2200 Series. If this is the case in a particular jurisdiction, the amendment makes clear that one steward may adjudicate these violations regardless of whether the state jurisdiction's rules require two or three stewards to rule on violations. In addition, the amendment to Rule 8320(a) further provides that all testimony

at a stewards' hearing shall be given under oath, and a record of the hearing shall be kept by use of an audio recorder, video recording, or court reporter's transcript. While this is already routinely done in many jurisdictions, the new language makes the requirement explicit.

The Authority proposes to amend Rule 8320(b)(1) and Rule 8330(a) in an identical manner to specify that when a case is referred to the National Stewards Panel by the Racetrack Safety Committee or the Board, "one or more members" of the Panel may be designated to adjudicate the case. This amendment is included to bring Rule 8330 in conformity with Rules 3000 and 7000 Series, which will establish and set forth the procedures applicable to the National Stewards Panel. These rules are under development and will be filed with the Commission prior to January 1, 2023.

Several amendments are proposed to modify Rule 8340, "Initial Hearings Conducted Before the Racetrack Safety Committee or the Board of the Authority." Rule 8340(3) as previously filed states that "[a]ll testimony in proceedings before the Board or the Racetrack Safety Committee shall be given under oath;" that paragraph is amended to further state that "a record of the proceedings shall be kept in stenographic or recorded form." Rule 8340(h) is amended to make clear that a party to initial hearings before the Board or the Racetrack Safety Committee is entitled to be represented by counsel at the party's expense.

Additional rules are proposed for inclusion in Rule 8340 that permit the Board and the Racetrack Safety Committee to appoint a presiding officer to assist in the conduct of hearings. Rule 8340(i) specifies that the presiding officer may be assigned to exercise various powers similar to those that are performed by administrative law judges in contested proceedings at the state and federal level. These powers are set forth with specificity in the proposed rule and generally serve to ensure the orderly conduct of the presentation of evidence and witnesses and to regulate the conduct of parties and their

attorneys. The Authority consulted and closely followed similar provisions in the “Hearing Rules and Procedures” of the New York Racing Association in developing these rules.

The presiding officer may also be directed by the Board and the Racetrack Safety Committee under Rule 8340(j) to prepare a hearing report with a recommended penalty, if applicable, and the parties may be required to file briefs for consideration by the hearing officer in preparing the hearing report. The rule states that once the hearing report has been received by the Racetrack Safety Committee or the Board, these bodies may adopt, modify, or reject any or all the hearing report, including any recommended penalty. These rules parallel similar concepts in Kentucky’s statutory scheme concerning the conduct of administrative hearings by an administrative law judge. Rule 8350, “Appeal to the Board,” is amended in paragraphs (h) and (i) to permit the Board in appeal proceedings to appoint a hearing officer under the same rules set forth in Rule 8340 concerning the conduct of initial hearings and the preparation of a hearing report. Additionally, Rule 8350(e) is amended to specify that the Board has the discretion to decide an appeal solely upon written submissions or in the alternative to conduct a hearing upon the issues raised by the appeal. In the same rule, the word “heard” is replaced with the word “reviewed” to conform to the change. Rule 8350(c) is modified to provide that a stay may be issued on appeal not only by the Board but also “by any official or body of the Authority to whom the Board delegates the authority to review requests for stay.”

Rule 8360, “Accreditation Procedures,” is amended in several places to include the words “suspended” or “suspension,” to conform to Rule 2116, “Suspension and Revocation of Accreditation,” which authorizes suspension as a penalty. Rule 8360(f)(1) is revised to refer more precisely to the “Board” in the context of the rule, rather than the “Authority.” The word “an” is added to correct a scrivener’s error in Rule 8360(f)(2). A

short provision, Rule 8011, is added to specify that time is calculated under the Rule 8000 Series in calendar days and that, if the last day of a specified period of time falls on a Saturday, Sunday, or holiday, the last day shall be considered to be the next working day following the Saturday, Sunday, or holiday.

III. Self-Regulatory Organization's Summary of Comments Received Pre-Submission and Its Responses to Those Comments

As encouraged by the Commission's procedural rule, the Authority, before finalizing this submission to the Commission, made a draft of the Enforcement proposed rule modification available to the public for review and comment on the HISA website, <https://www.hisausregs.org/>. Comments on the proposed rule modification were received from five individuals and groups in the horseracing industry: The Jockey Club, The Jockeys' Guild, Racing Officials Accreditation Program ("ROAP"), Colonial Downs Racetrack, and the American Association of Equine Practitioners ("AAEP").

Two of the commenters, Colonial Downs Racetrack and AAEP, stated that they had reviewed the proposed rule modification and had no suggested changes to offer. The three other commenters, The Jockey Club, The Jockeys' Guild, and ROAP, did not question or critique the proposed rule modifications as a whole but instead offered constructive suggestions to fine-tune various provisions in the initial drafts of the proposed rule modification. The Authority adopted a number of these suggested changes into the proposed rule modification as it developed into its final form.

ROAP suggested that a lengthy sentence in an initial draft of Rule 8320(a) concerning adjudication by the stewards be broken into two sentences for clarity. The Authority amended the sentence according to the suggestion, with some additional modifications. The Jockeys' Guild suggested that a short provision be added to Rule 8200(d), Notice of Suspected or Actual Violation, to clarify that the Authority may make

a finding of no violation after review of a Covered Person's response to a Notice.

Language was added in conformity with the suggestion.

The Jockey Club suggested that Rule 8340(c)(3), which requires notice to be provided in advance of a hearing before the Board or the Racetrack Safety Committee, be amended to replace "alleged violation" with "rule or rules allegedly violated." This suggestion is well taken and is included in the proposed rule modification for clarity.

The Authority also implemented a suggestion from The Jockey Club that language be added to permit hearings by the Board and the Racetrack Safety Committee under Rules 8340(a) and (b) and Rule 8350 to be conducted both in-person and through the use of audio-visual teleconferencing. This language was included in the draft, and the Authority added language to permit the use of telephone audio systems as well.

The Jockey Club also helpfully suggested that, if a hearing report is created, the parties should be permitted to file exceptions to the reports "as a matter of right." The draft language of Rule 8340(j) was therefore amended to make clear that exceptions may be filed by the parties to a hearing report.

The Authority declined to make some of the changes suggested by the commenters. Two of the suggestions were of more significance than the rest. The Jockey Club suggested that the seven-day deadline for a Covered Person's response to a Notice of Suspected or Actual Violation in Rule 8200(d)(1)(iii) be extended to twenty or thirty days. The Authority declined to make this change because some violations may present a hazard to racing participants and the public, and a rapid resolution of the matter is necessary. Nevertheless, the Rule provides for a longer response time "as deemed appropriate and specified in the notice," based on the seriousness of the violation and the imminence of risk to Covered Persons, Covered Horses, and the public. In cases where those concerns are not present, it is anticipated that a longer response time will be specified in the notice as appropriate to the case.

The Jockeys' Guild suggested that the term "good cause" be further defined in Rule 8350, which provides that a penalty may be stayed upon good cause shown. The Authority considered this change but opted to let the rule stand as written. This term is frequently employed without further definition in many areas of the law, and it is difficult to enumerate all of the factual circumstances that may qualify as a showing of "good cause."

The remaining suggestions that the Authority declined to adopt involved minor revisions to various rules that the Authority believed were unnecessary to effectuate the intention of the rules. Some of the comments received posed questions about the application of a provision, rather than suggesting specific changes. In such instances no change was made, but the Authority is working diligently to educate and inform the racing community about the new rules to be implemented by the Authority.

All of the changes proposed in the proposed rule modification are intended to enhance the Rule 8000 Series in a manner consistent with 15 U.S.C. 3057(d). An effective enforcement system builds public confidence in the sport by ensuring that Covered Horseraces are conducted in a fair and transparent manner. The proposed rules are carefully tailored to the unique character of horseracing and to the organizational structure of the Authority. Covered Persons will benefit from the effective enforcement of the rules, the standards of integrity in racing that the rules establish, and the deterrence of violations. The safety and well-being of Covered Horses, always a primary concern to the Authority, will be safeguarded by the elaborate Rule 2000 Series Racetrack Safety rules promulgated by the Authority, and by the Rule 8000 Series that ensures that the Racetrack Safety rules are effectively enforced.

IV. Legal Authority

This rule modification is proposed by the Authority for approval or disapproval by the Commission under 15 U.S.C. 3053(c)(1).

V. Effective Date

If approved by the Commission, this proposed rule modification will take effect immediately.

VI. Request for Comments

Members of the public are invited to comment on the Authority's proposed rule modification. The Commission requests that factual data on which the comments are based be submitted with the comments. The supporting documentation referred to in the Authority's filing, as well as the written comments it received before submitting the proposed rule modification to the Commission, are available for public inspection at <https://www.regulations.gov> under docket number FTC-2022-0044.

The Commission seeks comments that address the decisional criteria provided by the Act. The Act gives the Commission two criteria against which to measure proposed rules and rule modifications: "The Commission shall approve a proposed rule or modification if the Commission finds that the proposed rule or modification is consistent with—(A) this chapter; and (B) applicable rules approved by the Commission."¹⁸ In other words, the Commission will evaluate the proposed rule modification for its consistency with the specific requirements, factors, standards, or considerations in the text of the Act as well as the Commission's procedural rule.

Although the Commission must approve the proposed rule modification if the Commission finds that the proposed rule modification is consistent with the Act and the Commission's procedural rule, the Commission may consider broader questions about the health and safety of horses or the integrity of horseraces and wagering on horseraces in another context: "The Commission may adopt an interim final rule, to take effect immediately, . . . if the Commission finds that such a rule is necessary to protect—(1) the health and safety of covered horses; or (2) the integrity of covered horseraces and

¹⁸ 15 U.S.C. 3053(c)(2).

wagering on those horseraces.”¹⁹ The Commission may exercise its power to issue an interim final rule on its own initiative or in response to a petition from a member from the public. If members of the public wish to provide comments to the Commission that bear on protecting the health and safety of horses or the integrity of horseraces and wagering on horseraces but do not discuss whether the Authority’s Enforcement proposed rule modification is consistent with the Act or the applicable rules, they should not submit a comment here. Instead, they are encouraged to submit a petition requesting that the Commission issue an interim final rule addressing the subject of interest. The petition must meet all the criteria established in the Rules of Practice (Part 1, Subpart D)²⁰; if it does, the petition will be published in the *Federal Register* for public comment. In particular, the petition for an interim final rule must “identify the problem the requested action is intended to address and explain why the requested action is necessary to address the problem.”²¹ As relevant here, the petition should provide sufficient information for the public to comment on, and for the Commission to find, that the requested interim final rule is “necessary to protect—(1) the health and safety of covered horses; or (2) the integrity of covered horseraces and wagering on those horseraces.”²²

VII. Comment Submissions

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before [INSERT DATE 14 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Write “HISA Enforcement Rule Modification” on your comment. Your comment—including your name and your State—will be placed on the public record of this proceeding, including, to the extent practicable, on the website <https://www.regulations.gov>.

¹⁹ 15 U.S.C. 3053(e).

²⁰ 16 CFR 1.31; *see* Fed. Trade Comm’n, Procedures for Responding to Petitions for Rulemaking, 86 FR 59851 (Oct. 29, 2021).

²¹ 16 CFR 1.31(b)(3).

²² 15 U.S.C. 3053(e).

Because of the public health emergency in response to the COVID-19 outbreak and the Commission's heightened security screening, postal mail addressed to the Commission will be subject to delay. The Commission strongly encourages that comments be submitted online through the <https://www.regulations.gov> website. To ensure that the Commission considers online comment, please follow the instructions on the web-based form.

If you file your comment on paper, write "HISA Enforcement Rule Modification" on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex B), Washington, DC 20580.

Because your comment will be placed on the public record, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not contain sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other State identification number or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "[t]rade secret or any commercial or financial information which . . . is privileged or confidential"—as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with

FTC Rule 4.9(c), 16 CFR 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at <https://www.regulations.gov>—as legally required by FTC Rule 4.9(b), 16 CFR 4.9(b)—we cannot redact or remove your comment, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website to read this document and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments it receives on or before [INSERT DATE 14 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/siteinformation/privacypolicy>.

VIII. Communications by Outside Parties to the Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding, from any outside party to any Commissioner or Commissioner’s advisor, will be placed on the public record. *See* 16 CFR 1.26(b)(5).

IX. Self-Regulatory Organization’s Proposed Rule Language

The following language reflects the Enforcement rule with the proposed modifications incorporated. A redline version that shows every way in which the previously approved Enforcement rule would be modified by the proposed rule modification is available as Exhibit C on the docket at <https://www.regulations.gov>.

8000. Violations, Sanctions, Hearing Procedures, and Investigatory Powers

8011. Calculation of Time

In calculating any period of time prescribed in the Rule 8000 Series, time shall be calculated in calendar days. If the last day of a specified period of time falls on a Saturday, Sunday, or holiday, then the last day of the period shall be considered to be the next working day immediately following the Saturday, Sunday, or holiday.

8100. Violations

Violations under this Rule shall include:

- (a) Failure to cooperate with the Authority or an agent of the Authority during any investigation;
- (b) Failure to respond truthfully, to the best of a Covered Person's knowledge, to a question of the Authority or an agent of the Authority with respect to any matter under the jurisdiction of the Authority;
- (c) Tampering or attempted tampering with the application of the safety, performance, or anti-doping and medication control rules or process adopted by the Authority, including:
 - (1) Intentional interference, or an attempt to interfere, with an official or agent of the Authority;
 - (2) Procurement or the provision of knowingly false information to the Authority or agent of the Authority; and
 - (3) The intimidation of, or an attempt to intimidate, a potential witness;
- (d) Assisting, encouraging, aiding, abetting, conspiring, covering up, or any other type of intentional complicity involving a racetrack safety violation, or the violation of a period of suspension or ineligibility;
- (e) Threatening or seeking to intimidate a person with the intent of discouraging the person from the good faith reporting to the Authority, an agent of the Authority, or the Commission, of information that relates to:
 - (1) A suspected or alleged violation of a rule in the Rule 2200 Series; or

- (2) A suspected or alleged noncompliance with a rule in the Rule 2200 Series;
- (f) Failure to comply with a written order or ruling of the Authority or an agent of the Authority pertaining to a racing matter or investigation;
- (g) Failure to register with the Authority, failure of a Responsible Person to register a Covered Horse, making a knowingly false statement or omission of information in an application for registration with the Authority, or failure to advise the Authority of material changes in the application information as required under any provision in Authority regulations;
- (h) Perpetrating or attempting to perpetrate a fraud or misrepresentation in connection with the care or racing of a Covered Horse;
- (i) Failure to remit fees as required under 15 U.S.C. 3052(f)(3); and
- (j) Failure by a Racetrack to collect equitable allocation amounts among Covered Persons in conformity with the funding provisions of 15 U.S.C. 3052(f)(3) and any rules pertaining thereto.

8200. Schedule of Sanctions for Violations; Consent Decrees; Notice of Suspected or Actual Violation

(a) Application. This Schedule shall apply to any violation of, or failure to comply with, the Act or regulations promulgated by the Authority by a Covered Person, except for:

- (1) Anti-doping and medication control rule violations as established in the Rule 3000 Series; and

- (2) State laws or regulations not pre-empted by 15 U.S.C. 3054(b).

(b) Imposition of Sanction. The Authority, the Racetrack Safety Committee, the stewards, any steward or body of stewards selected from the National Stewards Panel, or an Arbitral Body, after any hearing required to be conducted in accordance with the Rule 7000 Series or Rule 8000 Series and upon finding a violation or failure to comply with the regulations of the Authority with the exceptions identified in paragraph (a), may

impose one or more of the following sanctions on a Covered Person for each violation of the rules of the Authority, in proportion to the nature, chronicity, and severity of the violation:

- (1) For a violation of Rule 2271(b) or 2272 relating to the use of Shock Wave Therapy, a violation of Rule 2273 relating to the use of other electrical or mechanical devices, or a violation of Rule 2280 relating to the use of the riding crop, impose the penalties set forth in Rules 2272, 2274, 2282, and 2283, in addition to any penalty set forth in Rule 8200(b)(2) through (12);
- (2) Impose a fine upon a Covered Person in the following amounts:
 - (i) Up to \$50,000.00 for a first violation, or
 - (ii) Up to \$100,000.00 for a second violation of the same or similar nature to a prior violation, or any violation that due to its nature, chronicity, or severity poses an actual or potential threat of harm to the safety, health, and welfare of Covered Persons, Covered Horses, or the integrity of Covered Horseraces;
- (3) Deny or suspend the registration of a Covered Person for a definite period, probationary period, or a period contingent on the performance of a particular act;
- (4) Revoke the registration of a Covered Person subject to reapplication at a specified date;
- (5) Impose a lifetime ban from registration with the Authority;
- (6) Deny a Covered Person or a Covered Horse access to any location under the jurisdiction of the Authority during the period of a suspension;
- (7) Impose a temporary or permanent cease and desist order against a Covered Person;
- (8) Require a Covered Person as a condition of participation in horseracing to take any remedial or other action that is consistent with the safety, welfare, and

integrity of Covered Horses, Covered Persons, and Covered Horseraces;

(9) Deny or require the forfeiture of purse money, disqualify a horse, or make changes to the order of finish in Covered Races as consistent with the safety, welfare, and integrity of Covered Horses, Covered Persons, and Covered Horseraces;

(10) Censure a Covered Person;

(11) Prohibit a Racetrack from conducting any Covered Horserace; or

(12) Impose any other sanction as a condition of participation in horseracing as deemed appropriate by the Authority in keeping with the seriousness of the violation and the facts of the case, and that is consistent with the safety, welfare, and integrity of Covered Horses, Covered Persons, and Covered Horseraces.

(c) Consent Decrees. The Authority shall have the discretion to enter into a consent decree or other similar agreement with a Covered Person as necessary to promote the safety, welfare, and integrity of Covered Horses, Covered Persons, and Covered Horseraces.

(d) Notice of Suspected or Actual Violation.

(1) The Authority, the Racetrack Safety Committee, or one or more stewards may issue a Notice of Suspected or Actual Violation to a Covered Person in any case in which the Authority has reason to believe that the Covered Person has violated or has failed to comply with any provision of regulations of the Authority. The notice shall:

(i) Identify the provision or provisions which the Covered Person is believed to have violated;

(ii) Specify with reasonable particularity the factual basis of the Authority's belief that the provision has been violated; and

(iii) Provide the Covered Person at least 7 days to respond, or a longer

period as deemed appropriate and specified in the Notice based upon:

- (A) The seriousness of the violation;
- (B) The imminence of risk to Covered Persons, Covered Horses, Covered Horseraces, or the public; or
- (C) Any other relevant factor.

(2) Upon receipt of the Notice of Suspected or Actual Violation, the Covered Person shall respond in writing to the issuing body within the time period specified in the notice. The Covered Person shall include in the response:

- (i) A statement by the Covered Person admitting the violation or explaining the reasons why the Covered Person believes that a violation has not occurred;
- (ii) All relevant details concerning the circumstances of the suspected or actual violation, including the results of any investigation undertaken by the Covered Person of the circumstances, and identification of any persons responsible for the circumstances; and
- (iii) A detailed explanation of any remedial plan the Covered Person proposes to undertake to cure the suspected or actual violation and the date of the expected completion of the remedial plan.

(3) Upon receipt of the written response of the Covered Person, the issuing body may accept any proposed remedial plan, subject to any reasonable modifications the issuing body deems necessary, or it may initiate disciplinary proceedings in conformity with the provisions of Rule 8300. If the issuing body determines that no violation has occurred, the issuing body shall so inform the Covered Person and no further action shall be taken.

8300. Disciplinary Hearings and Accreditation Procedures

8310. Application

An alleged violation or failure to comply with the provisions of the Rule 2200 Series and any alleged violation of the rules set forth in Rule 8100 shall be adjudicated in accordance with this Rule 8300 Series, except that:

(a) An alleged violation of the anti-doping and medication control rule provisions in the Rule 3000 Series shall be adjudicated in accordance with the procedures set forth therein; and

(b) This regulation shall not apply to the adjudication of violations arising under state laws, racing rules, and regulations not preempted under 15 U.S.C. 3054(b).

8320. Adjudication of Violations in the Rule 2200 Series

(a) The stewards shall adjudicate all alleged violations of Rules 2271(b) or 2272 relating to the use of Shock Wave Therapy, Rule 2280 relating to the use of the riding crop, and Rule 2273 relating to the use of other electrical or mechanical devices. The stewards shall apply the hearing procedures of the state jurisdiction in which the violation is alleged to have occurred. Provided, however, that in any state that has not entered into an agreement with the Authority under which the state stewards serve in an adjudicatory capacity under the Rule 8000 Series and enforce the Rule 2200 Series, a hearing may be conducted by one or more stewards, notwithstanding any state rule to the contrary. All testimony at a stewards' hearing shall be given under oath, and a record of the hearing shall be kept by use of an audio recorder, video recording, or court reporter's transcript. Any ruling by the stewards finding a violation may be appealed to the Board of the Authority under the procedures described in Rule 8350. An appeal shall be filed in writing within 10 days of the issuance of the ruling by the stewards.

(b) With regard to any matter involving an alleged violation of a rule in the Rule 2200 Series other than those set forth in paragraph (a) above, the Racetrack Safety Committee may, at its discretion and taking into account the seriousness of the alleged violation and the facts of the case:

- (1) Refer the matter to one or more members of the National Stewards Panel for adjudication in conformity with the procedures established in the Rule 7000 Series;
- (2) Refer the matter to an independent Arbitral Body for adjudication in conformity with the procedures established in the Rule 7000 Series;
- (3) Refer the matter to the stewards for adjudication in accordance with the hearing procedures of the applicable state jurisdiction. Provided, however, that in any state that has not entered into an agreement with the Authority under which the state stewards serve in an adjudicatory capacity under the Rule 8000 Series and enforce the Rule 2200 Series, a hearing may be conducted by one or more stewards, notwithstanding any state rule to the contrary; or
- (4) Conduct a hearing upon the matter itself, under the procedures set forth in Rule 8340.

8330. Adjudication of Rule 8100 Violations

With regard to any matter involving an alleged violation of a rule established in Rule 8100, the Board of the Authority may, at its discretion and taking into account the seriousness of the violation and the facts of the case:

- (a) Refer the matter to one or more members of the National Stewards Panel for adjudication in conformity with the procedures established in the Rule 7000 Series;
- (b) Refer the matter to an independent Arbitral Body for adjudication in conformity with the procedures established in the Rule 7000 Series;
- (c) Refer the matter to the stewards for adjudication in accordance with the hearing procedures of the applicable state jurisdiction. Provided, however, that in any state that has not entered into an agreement with the Authority under which the state stewards shall serve in an adjudicatory capacity under the Rule 8000 Series and enforce the Rule 2200 Series, a hearing may be conducted by one or more stewards, notwithstanding any state

rule to the contrary; or

(d) Conduct a hearing upon the matter itself, under the procedures set forth in Rule 8340.

8340. Initial Hearings Conducted Before the Racetrack Safety Committee or the Board of the Authority

(a) An initial hearing before the Board shall be conducted by a panel of three Board members. The Board chair shall appoint the panel members and shall also designate one of them as the chair of the panel. At the discretion of the panel of the Board, an initial hearing may be conducted in person or by means of an audio-visual teleconferencing system or a telephone audio system.

(b) An initial hearing before the Racetrack Safety Committee shall be heard by a quorum of the Racetrack Safety Committee. The Racetrack Safety Committee Chair shall act as the chair of the hearing panel unless the Chair is unavailable, in which case the Racetrack Safety Committee Chair shall designate a member of the quorum to act as the chair of the panel. At the discretion of the Racetrack Safety Committee, an initial hearing may be conducted in person or by means of an audio-visual teleconferencing system or a telephone audio system.

(c) Persons entitled to notice of a hearing before the Board or the Racetrack Safety Committee shall be informed not less than 20 days prior to the hearing of:

- (1) The time, place, and nature of the hearing;
- (2) The legal authority and jurisdiction under which the hearing is to be held;
- (3) A description of the rule or rules allegedly violated, specifying by number the rule allegedly violated; and
- (4) A statement of the factual basis of the alleged violation in sufficient detail to provide adequate opportunity to prepare for the hearing.

(d) At any time prior to, during, or after the hearing, the Board or the Racetrack Safety Committee in its discretion may require the submission of written briefs or other

information as will assist in the hearing of the matter.

(e) All testimony in proceedings before the Board or the Racetrack Safety Committee shall be given under oath, and a record of the proceedings shall be kept in stenographic or recorded form.

(f) The burden of proof shall be on the party alleging the violation to show, by a preponderance of the evidence, that the Covered Person has violated or failed to comply with a provision of or is responsible for a violation of a provision of the Authority's regulations.

(g) The Board or the Racetrack Safety Committee shall allow a full presentation of evidence and shall not be bound by the technical rules of evidence. However, the Board or the Racetrack Safety Committee may disallow evidence that is irrelevant or unduly repetitive of other evidence. The Board or the Racetrack Safety Committee shall have the authority to determine, in its sole discretion, the weight and credibility of any evidence or testimony. The Board or the Racetrack Safety Committee may admit hearsay evidence if it determines the evidence is of a type that is commonly relied on by reasonably prudent people. Any applicable rule of privilege shall apply in hearings before the Board or the Committee.

(h) A party shall be entitled to present its case or defense by oral or documentary evidence, to be represented by counsel at the party's expense, to submit rebuttal evidence, and to conduct such limited cross-examination as may be required for a full and true disclosure of the facts.

(i) Presiding Officer for the Conduct of the Hearing. The Board or the Racetrack Safety Committee may appoint a presiding officer to assist in regulating the orderly conduct of and presentation of evidence at the hearing. The Board or the Racetrack Safety Committee may assign to the presiding officer any or all of the following powers, in any manner that the Board or Racetrack Safety Committee determines is most appropriate

based upon the nature and complexity of the subject matter of the hearing. The presiding officer may be granted the power to:

- (1) Rule upon requests, including all requests for adjournments;
- (2) Set the time and place of hearing, recesses, and adjournments;
- (3) Administer oaths and affirmations;
- (4) Summon and examine witnesses, including the authority to direct a party to appear and to testify;
- (5) Order that opening and closing statements be made;
- (6) Admit or exclude evidence;
- (7) Allow oral argument, so long as it is recorded;
- (8) Issue orders limiting the scope and length of cross-examination, the length of briefs, and other similar matters;
- (9) Order the parties to appear for a prehearing conference to consider matters that may simplify the issues or expedite the proceeding; and
- (10) Perform all acts and take all measures necessary for the maintenance of order and the efficient conduct of the hearing.

(j) Presiding Officer for the Submission of a Hearing Report. The Board or the Racetrack Safety Committee may direct a presiding officer to issue in writing a hearing report at the conclusion of the hearing and to submit it to the Board or the Racetrack Safety Committee and all parties. A copy of the record of the hearing shall accompany the hearing report. The hearing report shall set forth findings of fact, conclusions of law, and a recommended disposition. If the presiding officer finds that imposition of a penalty under Rule 8200 upon a party to the hearing is warranted, the recommended penalty shall be set forth in specific detail, including the length of any suspension and the amount of any fine. If so directed by the Board or the Racetrack Safety Committee, the presiding officer shall establish a schedule for the filing by the parties of:

(1) Briefs to be considered by the presiding officer prior to the presiding officer's preparation of the hearing report; and

(2) Exceptions to the presiding officer's hearing report after the hearing report has been delivered to the parties. The exceptions may include for consideration and adoption by the Board or the Racetrack Safety Committee the particular findings of fact, conclusions of law, and recommendations for disposition with which the party disagrees and the reasons for such disagreement, any general comments by the party on the suitability of the hearing report, and the party's alternative proposed findings of fact, conclusions of law, and recommendations for disposition. A party shall send a copy of its exceptions to all other parties or their attorneys and presiding officer.

(k) Review by the Board or the Racetrack Safety Committee. Upon receipt of the record of the hearing, and of any hearing report and exceptions thereto submitted pursuant to paragraph (j), the Board or the Racetrack Safety Committee shall review the record and submissions. The period for review shall not exceed 20 days unless extended by the Board or the Racetrack Safety Committee upon notice to all parties.

(l) Written Decision. The Board or the Racetrack Safety Committee shall issue to all parties within 30 days of the close of the review period a written decision setting forth findings of fact, conclusions of law, and the disposition of the matter including any penalty imposed. If a hearing report has been received, the Board and the Racetrack Safety Committee shall have discretion to adopt, modify, or reject any or all of the hearing report including, but not limited to, the appropriate disposition of the proceeding and any penalty recommended.

8350. Appeal to the Board

(a) Any decision rendered by the Racetrack Safety Committee, the stewards, the National Stewards Panel, or an Arbitral Body may be appealed on the record to the Board. The

decision may be appealed by a party to the decision, or the decision may be reviewed upon the Board's own initiative and at its discretion.

(b) Any decision rendered by an initial Board hearing panel may be appealed on the record to the Board, to be reviewed by a quorum of the Board which shall not include the Board members who were on the panel in the initial hearing. The decision may be appealed by a party to the decision, or the decision may be reviewed upon the Board's own initiative and at its discretion.

(c) An appeal shall not automatically stay the decision. A party may request the Board to stay the decision. A stay may be issued by the Board, or any official or body of the Authority to whom the Board delegates the authority to review requests for stay, for good cause shown.

(d) A party to the decision may appeal to the Board by filing with the Board a written request for an appeal within 10 days of receiving a written order. The appeal request shall contain the following information:

- (1) The name, address, and telephone number, if any, of the appellant;
- (2) A description of the objections to the decision;
- (3) A statement of the relief sought; and
- (4) Whether the appellant desires to have a hearing of the appeal.

(e) The Board may in its discretion review a decision based solely upon written submissions scheduled for filing with such timing and response requirements as the Board may require. Alternatively, or in addition to written submissions, the Board may set a date, time, and place for a hearing. Notice shall be given to the appellant in writing and shall set out the date, time, and place of the hearing, and shall be served personally or sent by electronic or U.S. mail to the last known address of the appellant. If the appellant objects to the date of the hearing, the appellant may obtain a continuance, but the continuance shall not automatically stay imposition of a sanction or prolong a stay issued

by the Board. At the discretion of the Board, the hearing may be conducted in person or by means of an audio-visual videoconferencing system or a telephone audio system.

(f) Upon review of the decision that is the subject of the appeal, the Board shall uphold the decision unless it is clearly erroneous or not supported by the evidence or applicable law.

(g) Upon completing its review, the Board may:

(1) Accept the decision;

(2) Reject or modify the decision, in whole or in part;

(3) Remand the matter, in whole or in part, to the stewards, Racetrack Safety Committee, the National Stewards Panel, or an Arbitral Body, as the case may be, for further proceedings as appropriate; or

(4) Conduct further proceedings on the matter as appropriate, including but not limited to requiring the submission of written briefs or, in extraordinary circumstances and at the Board's discretion, the taking of additional testimony before the Board under oath.

(h) The Board may appoint a presiding officer to assist in regulating the orderly conduct of and presentation of evidence at a hearing in accordance with Rule 8340(i). The Board may also direct a presiding officer to issue in writing a hearing report at the conclusion of the hearing in accordance with Rule 8340(j).

(i) The Board shall issue its written decision based on the record and any further proceedings, testimony, or hearing report and exceptions thereto submitted in accordance with Rule 8340(k). If a hearing report and exceptions have been submitted, the Board's written decision shall in accordance with Rule 8340(l) include findings of fact, conclusions of law, and the disposition of the matter including any penalty imposed. The Board shall not be bound by the timing provisions in Rules 8340(k) and (l) relating to the period for review and the issuance by the Board of its written decision. A copy of the

Board's decision shall be served upon all parties by first class mail, electronic mail, or personal service.

(j) The decision of the Board shall be the final decision of the Authority.

8360. Accreditation Procedures

(a) Any decision issued by the Authority denying, suspending, or revoking racetrack accreditation may:

(1) Be appealed within 10 days by the Racetrack to the Authority for a de novo hearing reviewing the Authority's decision; or

(2) Reviewed by the Authority on its own initiative.

(b) The Authority's order suspending or revoking accreditation shall be stayed automatically pending review of the decision by the Authority.

(c) At its discretion, the Authority may request and consider any additional information from any source that may assist in the review.

(d) The Racetrack may request to make a presentation before the Authority concerning racetrack safety and any remedial efforts proposed to be undertaken by the Racetrack. At its discretion, the Authority may permit the Racetrack to make such presentation.

(e) In conducting its review, that Authority may consider all factors that it deems appropriate, including but not limited to:

(1) The extent and magnitude of any deficiencies in racetrack operations conducted at the Racetrack;

(2) The threat posed by the deficiencies to the safety and integrity of horseracing conducted at the Racetrack;

(3) The adequacy of the efforts the Racetrack proposes to undertake or has undertaken to remedy all deficiencies at the Racetrack;

(4) The likelihood and timeframe within which compliance will be achieved by the Racetrack, given the resources available to the Racetrack and the past record

of the Racetrack in achieving and maintaining compliance with the rules of the Authority; and

(5) Any other factors the Authority deems relevant to its review.

(f) Upon completing its review, the Authority may take one or more of the following actions:

(1) Order that the Racetrack's accreditation be denied, suspended, or revoked, upon a vote in favor of denial or revocation by two-thirds of a quorum of the members of the Board;

(2) Reinstate accreditation subject to any requirements the Authority deems necessary to ensure that horseracing will be conducted in a manner consistent with racetrack safety and integrity. The Authority may also impose a fine upon reinstatement in an amount not to exceed \$50,000.00. The Authority may require the Racetrack to report at prescribed intervals on the status of racetrack safety operations and remedial efforts to improve safety pursuant to the Authority's racetrack safety rules; or

(3) Prohibit a Racetrack from conducting any Covered Horserace.

8370. Final Civil Sanction

Any decision rendered by the Board of the Authority under Rule 8350, or the Authority under Rule 8360, shall constitute a final civil sanction subject to appeal and review in accordance with the provisions of 15 U.S.C. 3058.

8380. Guidelines for Confidentiality and Public Reporting

As used in this Rule, "public disclosure" means the dissemination or distribution of information by the Authority to the general public.

(a) This Rule shall apply to an alleged violation of any provision of the Act, the Rule 2000 Series, the Rule 8000 Series, or the Rule 9000 Series. It shall not apply to:

(1) An alleged violation of the anti-doping and medication control rule provisions

in the Rule 3000 Series; or

(2) An alleged violation arising under state laws, racing rules, and regulations not preempted under 15 U.S.C. 3054(b).

(b) After notice of a violation of any provision in the Rule 2200 Series, the Rule 8000 Series, or the Rule 9000 Series has been provided to a Covered Person by the Authority or any official or body authorized to adjudicate violations under the Rule 8000 Series, the Authority shall publicly disclose the following information relating to the alleged violation:

(1) The identity of any Covered Person who is the subject of the alleged violation;

(2) The identity of any applicable horse; and

(3) The rule violated and, where appropriate, the basis of the asserted violation.

(c) Information as described in paragraph (b) concerning a violation of the Rule 2100 Series shall be disclosed in accordance with this Rule by the Authority either upon issuance of a Notice of Suspected or Actual Violation, or at any time thereafter, as deemed appropriate by the Authority.

(d) If at any time information pertaining to an alleged violation is publicly disclosed by the Covered Person charged with the violation or any employee or agent of the Covered Person, the Authority may comment on the information publicly disclosed by the Covered Person.

(e) The Authority shall not be required to make public disclosure if public disclosure will compromise an ongoing investigation or proceeding. When the Authority determines that an ongoing investigation or proceeding will no longer be compromised by public disclosure, the Authority shall at such time make any public disclosure required under this Rule.

(f) Notwithstanding any provision to the contrary in the rules of the Authority, the Authority may make public disclosure of any relevant information at any time, including

prior to delivery of notice of a violation, if the Authority determines that such disclosure:

- (1) Concerns a violation or circumstance that poses a serious and imminent risk of harm to Covered Persons, Covered Horses, or the public; or
- (2) Is otherwise in the best interest of horseracing conducted at Covered Horseraces.

(g) The Authority shall publicly disclose the resolution of an alleged violation no later than 20 calendar days after the earlier of:

- (1) The imposition of a final civil sanction;
- (2) A resolution between the Authority and the Covered Person; or
- (3) The dismissal of the allegation or a finding of no violation by the Authority.

(h) Public disclosure under paragraph (g)(1) & (2) shall include the following:

- (1) The name of the Covered Person who committed the violation and any Covered Horse affected by the violation;
- (2) The Rule violated;
- (3) The sanction imposed;
- (4) The order or other ruling issued in the matter; and
- (5) The results of any appellate decisions concerning the violation.

(i) Public Disclosure shall not be required under this Rule if the Covered Person alleged to have committed a violation is a minor. Public disclosure concerning a case involving a minor shall be at the discretion of the Authority and in proportion to the facts and circumstances of the case.

(j) Publication shall be accomplished at a minimum by placing the required information on the Authority's website or publishing it through other means.

(k) Pursuant to 15 U.S.C. 3054, this Rule shall preempt any provision of State law or regulation, including those pertaining to data practice and privacy laws.

8400. Investigatory Powers

(a) The Commission, the Authority, or their designees:

(1) Shall have free access to:

(i) With regard to Covered Persons, books, records, offices, racetrack facilities, and other places of business of Covered Persons that relate to the care, treatment, training, and racing of Covered Horses; and

(ii) With regard to any person who owns a Covered Horse or performs services on a Covered Horse, books, records, offices, facilities, and other places of business that relate to the care, treatment, training, and racing of Covered Horses.

(2) May seize any medication, drug, substance, or paraphernalia in violation or suspected violation of any provision of 15 U.S.C. Chapter 57A or the regulations of the Authority, and any object or device reasonably believed to have been used in furtherance of the violation or suspected violation.

(b) Upon final resolution of a violation, the Commission, the Authority, or their designees shall return seized property, including but not limited to phones, computers, and other repositories of electronic data, the possession of which is not specifically prohibited by the Act or the rules of the Authority.

(c) A Covered Person shall:

(1) Cooperate with the Commission, the Authority, or their designees during any investigation; and

(2) Respond truthfully to the best of the Covered Person's knowledge if questioned by the Commission, the Authority, or their designees about a racing matter.

(d) A Covered Person or any officer, employee, or agent of a Covered Person shall not hinder a person who is conducting an investigation under or attempting to enforce or administer any provision of 15 U.S.C. Chapter 57A or the regulations of the Authority.

(e) The Commission or the Authority may issue subpoenas for the attendance of witnesses in proceedings within their jurisdiction, and for the production of documents, records, papers, books, supplies, devices, equipment, and all other instrumentalities related to matters within the jurisdiction of the Commission or the Authority.

(f) Failure to comply with a subpoena or with the other provisions of this Rule may be penalized by the imposition of one or more penalties set forth in Rule 8200.

(g) The Commission or the Authority may administer oaths to witnesses and require witnesses to testify under oath in matters within the jurisdiction of the Commission or the Authority.

By direction of the Commission.

April J. Tabor,

Secretary.

[FR Doc. 2022-15972 Filed: 7/25/2022 8:45 am; Publication Date: 7/26/2022]